No. 449

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In the Supreme Court of the United States

OCTOBER TERM, 1932

MARICOPA COUNTY, ARIZONA; W. H. LINVILLE, as County Treasurer, and Ex-Officio Tax Collector of Maricopa County, Arizona; J. D. BRUSH, as County Assessor of Maricopa County, Arizona; CHARLES H. FIELDS, JOHN A. FOOTE and GEORGE FRYE, as members of and constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona; PIMA COUNTY, ARIZONA; WALLACE S. BRANSFORD, as County Treasurer and Ex-Officio Tax Collector of Pima County, Arizona; CHARLES M. TAYLOR, as County Assessor of Pima County, Arizona; THOMAS COLLINS, R. H. MARTIN, and J. B. MEAD, as members of and constituting the Board of Supervisors and County Board of Equalization of Pima County, Arizona,

Petitioners,

vs.

THE VALLEY NATIONAL BANK OF PHOENIX, a national banking association,

Respondent.

On Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

PETITION FOR WRIT OF CERTIORARI AND SUPPORTING BRIEF

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In the Supreme Court of the United States

MARICOPA COUNTY, ARIZONA; W. H. LINVILLE, as County Treasurer, and Ex-Officio Tax Collector of Maricopa County, Arizona; J. D. BRUSH, as County Assessor of Maricopa County, Arizona; CHARLES H. FIELDS, JOHN A. FOOTE and GEORGE FRYE, as members of and constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona; PIMA COUNTY, ARIZONA; WALLACE S. BRANSFORD, as County Treasurer and Ex-Officio Tax Collector of Pima County, Arizona; CHARLES M. TAYLOR, as County Assessor of Pima County, Arizona; THOMAS COLLINS, R. H. MARTIN, and J. B. MEAD, as members of and constituting the Board of Supervisors and County Board of Equalization of Pima County, Arizona,

Petitioners,

vs.

THE VALLEY NATIONAL BANK OF PHOENIX, a national banking association,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUT COURT OF APPEALS FOR THE NINTH CIRCUIT

TO THE HONORABLE CHIEF JUSTICE, AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The petitioners named in the caption above, and each of them, respectfully pray for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit to review the decision and decree of that

court rendered August 7, 1942, affirming the judgments of the United States District Court for the District of Arizona in two suits in equity catalogued in that court as No. E-333 and No. E-350 (R. 17, 86).

OPINION OF THE APPELLATE COURT

The Circuit Court of Appeals for the Ninth Circuit rendered an opinion but it has not been reported. It appears in the Transcript of Record beginning at page 381.

JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES

This court has jurisdiction to review the decision and judgment of the Circuit Court of Appeals under Sec. 240(a) of the Judicial Code. (28 U.S.C., Sec. 347(a)).*

The date of the decision and decree of the Circuit Court of Appeals sought to be reviewed is August 7, 1942 (R. 381, 388).

An order was made by the Circuit Court of Appeals on the 3rd day of September, 1942, staying issuance of mandate to and including the 15th day of October, 1942, conditioned upon the filing of this petition in this court within the date last mentoned (R. 389).

CONSTITUTION AND STATUTES INVOLVED

The statute involved is that part of the Act of Congress of March 20, 1936, c. 160, 49 Stat. 1185, Title 12, Sec. 51(d) U.S.C. which provides as follows:

*This section is printed in the Appendix at page 1.

"Notwithstanding any other provision of law or any privilege or consent to tax expressly or impliedly granted thereby, the shares of preferred stock of national banking associations, and the shares of preferred stock, capital notes, and debentures of State banks and trust companies, acquired before or after March 20, 1936, by Reconstruction Finance Corporation, and the dividends or interest derived therefrom by the Reconstruction Finance Corporation, shall not, so long as Reconstruction Finance Corporation shall continue to own the same, be subject to any taxation by the United States, by any Territory, dependency, or possession thereof, or the District of Columbia, or by any State, county, municipality, or local taxing authority, whether imposed, levied, or assessed on, before or after March 20, 1936, and whether for a past, present, or future taxing period."

The provisions of the Constitution of the United States involved are:

Fifth Amendment to the Constitution of the United States, and

Tenth Amendment to the Constitution of the United States.*

SUMMARY STATEMENT OF MATTER INVOLVED

These consolidated suits were for injunctions to restrain the collection of state, county, school district and municipal taxes for the years 1935 and 1936 filed in the District Court of the United States for the District of Arizona on the jurisdictional claim that the suits arose under the constitution and laws of the United States, Sec. 24 of the Judicial Code, as amended, Title 28, U.S.C., Sec. 41** (R. 23, 92).

*These amendments are printed in the Appendix at page 1.

**This section is printed in the Appendix at page 2.

The two cases were consolidated for trial and appeal (R. 188), and the appeal from the judgments granting the injunctions was heard as a single cause by the United States Circuit Court of Appeals for the Ninth Circuit, No. 10025.

Two of the counties involved, Maricopa and Pima, and their county officers (the amount involved as to the other counties being insignificant) prosecuted their appeal to the Circuit Court of Appeals pursuant to Sec. 128(a) of the Judicial Code as amended (Title 28, U.S.C., Sec. 225)*, inasmuch as no direct appeal lay to this court from the judgment. See:

> *Ex Parte Bransford*, 310 U.S. 354, 84 L. Ed. 1249, 60 Sup. Ct. Rep. 947,

where the County Treasurer of Pima County sought a writ of mandamus from this Court to the District Court to require that a special court of three judges be convened for consideration of these suits under Sec. 266 of the Judicial Code, 28 U.S.C., Sec. 380, the decision going against the application.

Respondent, The Valley National Bank of Phoenix, is incorporated as a national banking association under the laws of the United States, and has its principal banking house in Maricopa County, Arizona and a branch in Pima County, Arizona. (R. 18).

Congress has authorized the several states to tax the shares of capital stock of national banking associations by R.S. Sec. 5219, 42 Stat. 1499, 44 Stat. 223, Title 12, Sec. 548, U.S.C.**

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*This section is printed in the Appendix at page 2.

**This section is printed in the Appendix beginning at page 3.

Sections 3069, 3070 and 3071, Revised Code of Arizona, as amended by Chap. 110, Session Laws 1931, provide the method for assessing and taxing shares of capital stock of banks doing business in the State of Arizona, including national banks. (R. 25, 28 incl.).*

In order to provide sufficient capital to enable appellee to comply with the laws and regulations pertaining to national banks in the acquisition and the transaction of the banking business which it acquired on February 11, 1935, Reconstruction Finance Corporation of the United States of America purchased from appellee preferred capital stock of the par value of $1,240,000. (R. 28, 29).

The County Assessor of Maricopa County, one of the petitioners herein, in calculating the tax upon respondent's shares of stock for the year 1935, included the sum of $1,240,000 which is the par value of respondent's preferred stock owned by Reconstruction Finance Corporation. (R. 33, 34).

Pima County, one of the petitioners herein, likewise calculated a tax for the year 1935 upon $400,000 of the $1,240,000 of respondent's preferred capital stock which Reconstruction Finance Corporation had acquired. (R. 37).

Similar taxes were levied for the year 1936. (R. 104 to 107 incl.).

Under the laws of Arizona the lien of taxes upon real and personal property attaches on the first Monday of January of each year. (Sec. 3101 Revised Code of Arizona, 1928).**

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*These sections are printed in the Appendix beginning at page 7.

**This section is printed in the Appendix beginning at page 13.

Under Section 3074, Revised Code of Arizona, 1928, assessments of personal property are made by the County Assessor between the first Monday in January and the first Monday in May of each year.* Thus the assessment of the preferred capital stock was made for the year 1935 prior to the effective date of the Act of March 20, 1936, supra. While the assessment of the preferred capital stock for the year 1936 could have been made between March 20, 1936, (the effective date of the Act of Congress of March 20, 1936) and the first Monday of May in that year, nevertheless the lien of the tax for that year became impressed, as we have shown, on the first day of January of 1936. The Congress, by the passage of the Act of March 20, 1936, sought retroactively to intercept and destroy the taxes and the lien of the taxes for those years.

The suits were filed by respondent, as the bills of complaint will disclose (R. 17, 86), to enjoin the defendants from collecting the taxes for the years 1935 and 1936 levied upon this preferred stock, and by the bills respondent asserted that the waiver of exemption from taxation of property owned and held by an instrumentality of the United States, such as preferred capital stock of national banks owned by Reconstruction Finance Corporation, can be granted or withheld at the pleasure of Congress, and that when the privilege theretofore extended to the several states, counties and municipalities thereof, to tax such shares of preferred stock owned by an instrumentality of the United States was withdrawn by Congress, both as to taxes theretofore and thereafter levied, such withdrawal prevented the payment of such taxes by respondent or the Reconstruction Finance Corporation (R. 78, 79, 80).

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*Section 3074 is printed in the Appendix beginning at page 10.

Serious contention had been made that the states were without authority to tax the capital stock of national banks owned by Reconstruction Finance Corporation, and that contention found its way into this court where it was finally determined on February 3, 1936, that Congress had consented to the taxation of such stock by the states.

Baltimore National Bank vs. State Tax Commission, 297 U. S. 209, 56 Sup. Ct. Rep. 417, 80 L. Ed. 586.

Within a short time after the date of the rendition of the decision of this court in the case last mentioned, Congress enacted the Act of March 20, 1936, page 3, supra, which retrospectively seeks to invalidate taxes levied previous thereto by the states, including the tax here involved, upon the preferred capital stock of national banks owned by Reconstruction Finance Corporation.

Petitioners contended in the District Court, and in the Circuit Court of Appeals, that until the enactment of March 20, 1936, respondent's preferred stock was taxable by the State of Arizona, and that the Act of March 20, 1936, which purports to destroy that tax, is unconstitutional and void in that it deprives the State of Arizona, and the counties and school districts thereof, of their property without due process of law contrary to the Fifth Amendment to the Constitution of the United States; and that the Act of March 20, 1936, insofar as it purports to operate retrospectively upon the taxes, and the lien of taxes, here involved, and to destroy them, is an attempted exercise of a power not delegated to the United States by the Constitution of the United States, and not prohibited to the State of Arizona, and insofar as that act operates retrospective-

ly, it violates the Tenth Amendment to the Constitution of the United States; and further, that the Act of March 20, 1936, is unconstitutional and void in that the Congress was without power or authority to destroy property rights lawfully and validly accrued to the State of Arizona in the exercise of its power of taxation to raise revenues, and that the attempt to do so by that act constitutes an unwarranted invasion of the sovereign rights of the State of Arizona. (R. 167, 168, 185, 186).

The trial court made conclusions of law and found that the Act of March 20, 1936, which exempts preferred stock of national banks from taxation while owned by Reconstruction Finance Corporation, is constitutional, and that the provisions of that Act which operate retrospectively are of equal effect with those which operate prospectively. (R. 258, 325).

The judgments of the trial court in both suits decreed that only the taxes which were tendered for payment were collectible (i.e. taxes levied, less the taxes levied upon the preferred capital stock owned by Reconstruction Finance Corporation) and enjoined the collection of any taxes upon shares of the respondent's stock, both common and preferred, in excess of the amounts tendered. (R. 264, 265, 266; R. 331, 332, 333).

The judgments of the District Court, as we have said, were affirmed by the Circuit Court of Appeals (R. 388) and accordingly petitioners now seek a review by this court of the decision and judgment of the Circuit Court of Appeals.

SPECIFICATIONS OF ERROR

1. The Circuit Court of Appeals and the District Court erred in giving effect to the Act of Congress of March 20, 1936, Title 12, Sec. 51(d) U.S.C., and in

overruling the petitioners' objections to the enforcement of that Act, for the reason that the Act is in violation of the Fifth Amendment to the Constitution of the United States in this: that it deprives the State of Arizona, the counties of Maricopa and Pima, and legal subdivisions thereof, of their property without due process of law in destroying the tax, and the lien of the tax, for the years 1935 and 1936, levied and impressed upon respondent's preferred capital stock owned by Reconstruction Finance Corporation.

2. The Circuit Court of Appeals and the District Court erred in giving effect to the Act of Congress of March 20, 1936, Title 12, Sec. 51 (d), U.S.C., and in overruling the petitioners' objections to the enforcement of that Act, for the reason that the Act is in violation of the Tenth Amendment to the Constitution of the United States in this: that the taxes for the years 1935 and 1936 are a lien upon the preferred stock of the respondent owned by Reconstruction Finance Corporation by virtue of the exercise of the sovereign power of the State of Arizona as to a matter not delegated to the United States by the Constitution of the United States nor prohibited by that Constitution to the state, and since the state was protected by the Tenth Amendment in its sovereign right to lay the taxes, the Congress was without power to destroy the taxes, and the lien of the taxes, for those years.

3. The Circuit Court of Appeals and the District Court erred in holding that the consent given by Congress under Section 5219, Revised Statutes of the United States, Title 12, U.S.C., Sec. 548, if any such consent was needed, to the State of Arizona to tax the preferred stock of the respondent while owned by the Reconstruction Finance Corporation was a mere

bounty or a pure gratuity, and by holding that the Congress could withdraw the authority granted after the state had availed itself of the privilege of taxing such preferred stock, and after the lien of the taxes had become impressed and fixed thereon.

QUESTION PRESENTED

The question presented for consideration is whether Congress may constitutionally destroy state taxes, and the lien thereof, on preferred shares of capital stock of a national banking association in the ownership of Reconstruction Finance Corporation by retrospective legislation where the taxes in question were authorized by, and validly levied, under a previous Act of Congress, namely R. S. Sec. 5219, Title 12, Sec. 548, U.S.C., as construed by Baltimore National Bank vs. State Tax Commission, 297 U.S. 209, 56 Sup. Ct. Rep. 417, 80 L. Ed. 586, heretofore cited.

REASON RELIED UPON FOR THE ISSUANCE OF THE WRIT

Petitioners submit that the decision of the Circuit Court of Appeals was on an important question of federal law which has not been, but should be, settled by this court, to-wit: whether the Congress can constitutionally destroy by retrospective legislation a state tax lawful when levied, and levied with the consent of the Congress, upon the preferred capital stock of a national banking association while in the ownership of Reconstruction Finance Corporation.

WHEREFORE, the petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the United States Circuit Court of Appeals for the Ninth Circuit, commanding that court to certify and to send to this court for its review and determination, on a day certain

to be therein named, the full and complete transcript of record and all the proceedings entitled as in the caption of this petition, and catalogued in the lower court as No. 10025, and that the decision and judgment of the United States Circuit Court of Appeals for the Ninth Circuit may be reversed by this Honorable Court, and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioners will ever pray.

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CERTIFICATE OF COUNSEL

We, the undersigned, counsel for petitioners herein, do hereby certify that the foregoing petition for writ of certiorari in our opinion is well founded and meritorious, and we do further certify that it is not interposed and filed for the purpose of delay.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

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Petitioners,

vs.

THE VALLEY NATIONAL BANK OF PHOENIX, a national banking association,

Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

(All Specifications)

The State of Arizona is not named as a party on the record. While the state is not a necessary party, nevertheless it is a real party in interest.

The bills of complaint allege that the State Board of Equalization fixed the rate of taxes to be levied and collected within the counties for state purposes which it transmitted to the Boards of Supervisors of the several counties. (R. 50, 116, 117).

The counties are constituted agents of the state to collect taxes for the state, counties, and school districts, and a suit against the county lies to collect the whole tax.

Maricopa County vs. Hodgin, 46 Ariz. 247, 50 Pac. (2d) 15.

The prayers of the bills sought a declaration that the assessments upon the preferred capital stock for the purpose of state taxation, as well as county, school district and other local taxation, be decreed illegal and void. (R. 80, 146).

The judgments enjoined the petitioners from collecting any taxes as and for state, county, school district and other local taxes beyond those which were tendered and paid by respondent upon the shares of its common capital stock. Thus the judgments enjoined the collection of the taxes upon respondent's shares of preferred capital stock owned by Reconstruction Finance Corporation assessed not only for state purposes but also for other purposes. (R. 200, 201, 202; R. 264, 265, 266).

NATURE OF TAX IMMUNITY OF NATIONAL BANK STOCK

Conceding for the argument that states are without power to tax the shares of capital stock in a national banking association in the absence of Congressional leave (but see contrary view expressed by Marshall in the last paragraph of the leading case: McCulloch vs. Maryland, 4 Wheaton 316, 4 L. Ed. 579, and also Bank

Tax Case, 3 Wallace 573, 18 L. Ed. 229) and also that the Reconstruction Finance Corporation is a federal agency and entitled to claim exemption from state taxation of some of its property, we submit it does not follow that Congressional leave to tax such property may be withdrawn after the taxes have been assessed and levied.

The property of federal agencies such as national banks and the Reconstruction Finance Corporation is not ipso facto immune from state taxation. Where Congress is silent on the subject, the duty is imposed upon the court to determine the character of the property which the state seeks to tax and the Governmental need that such property remain free from that state taxation. This Court has held that, if the property is of such character that the state tax in no substantial way interferes with the function of the federal agency, it will not be voided. But Congress sometimes relieves the court of the duty of determining whether or not state taxation of property owned by federal agencies will offer substantial impediment in the way of that agency performing its functions, an instance being the frequently granted permission to tax real property of federal agencies, national banks, and Reconstruction Finance Corporation. Certainly, if the courts are able to say, upon a factual review, that the burden of state taxation is so slight that no real interference is effected thereby, Congress has the same privilege. In the railroad cases:

Thompson vs. Union Pacific Ry. Co., 9 Wallace 579, 76 U. S. 579, 19 L. Ed. 792,

and

Union Pacific Ry. Co. vs. Peniston, 18 Wallace 5, 21 L. Ed. 787,

this Court pointed out that the physical properties of federally incorporated railroads, agencies of the United States Government in very essential particulars (movement of troops, transmission of government messages, etc.) might nevertheless be taxed by the states, since the tax did not in truth deprive them of the power, or seriously lessen their power, to serve the Government.

As the Court in those cases, and others, declared, it is not the nature of the agency, but the character of the property belonging to the agency, and the effect of the taxation thereon, that determines whether it may be taxed by the states.

We submit that the declaration by Congress that property of federal agencies may be taxed by the state is a final and conclusive determination that the state taxation of that particular property will not interfere with the performance by that agency of its federal function. It is not only equal to a similar conclusion by this Court, which, after all, may change its mind without violating the Fifth Amendment or any other part of the Constitution, but it, when availed of by the state, gives rise to a property right as inviolate as that existing under and by virtue of any other act of Congress.

When Congress declared by Section 5219 of the Revised Statutes, Title 12 U.S.C., Section 548, supra, that all the capital stock of a national banking association was subject to state taxation, and left that statute undisturbed when it created the Reconstruction Finance Corporation and authorized the issuance of preferred stock, it must have weighed the considerations for and against the wisdom and effect of such taxation on such property and concluded that such state taxation could not in any real way prevent the performance by national banking associations and the Reconstruction

Finance Corporation of their duties—unless we are to convict Congress of authorizing such taxation in spite of a conclusion that it might interfere with the proper performance of such functons.

It may very well be that the effect of state taxation on property belonging to a federal agency so patently impairs its efficiency that a statute granting leave for such state taxation is itself void. An act of Congress permitting a state to tax an army post or federal mint or post office might be of that type. Perhaps Congress could not allow state taxation of any property belonging to the United States itself.

We have no such case. The decision of this court in the Baltimore Bank Case, supra, settled that.

RIGHT OF STATE TO TAX NOT GRATUITY

The Circuit Court of Appeals founds its opinion on the proposition that Congress was at liberty to change its mind on the state taxability of this stock; that the right to tax it was a mere bounty, a pure gratuity, withdrawable at any time, and regardless of the consequences to the states and the taxing units involved. It may not be unhelpful to a correct determination of the case to point out that if that doctrine is correct, Congress could with equal validity require the states to refund taxes long since paid and expended.

The fact that the federal government could have withheld leave to the states to tax this stock does not justify a characterization of the statute granting such leave as a bounty or gratuity on a par with pensions to veterans, etc. Our system of government is dual and necessarily co-operative and the two parts legislate with the single purpose in mind—the good of

their common citizenry. If any quid pro quo were necessary, it exists here in the fact that national banks and the Reconstruction Finance Corporation enjoy the protection and privileges afforded by the states and may look to the state courts for their enforcement. Because in those respects where, by leave from one to the other, or because of the duality of the constitutional structure, either may act, the consent by the one having the major right, exclusive if asserted, in favor of the other, is not a matter of gift but of governmental policy. See Bank Tax Case, supra.

But even if it were a gift, the rights thereunder became fixed and established. General language may be found in the pension cases:

United States vs. Teller, 107 U. S. 64, 27 L. Ed. 352;

Frisbie vs. United States, 157 U. S. 160, 39 L. Ed. 657;

as well as in:

Lynch vs. United States, 292 U. S. 571, 78 L. Ed. 1434, 54 Sup. Ct. Rep. 840,

to the effect that bounties, such as pensions, may be withdrawn by Congress at any time, as contradistinguished from contracts which are within the protection of the Constitution, but Congress has never retroactively destroyed an accrued right to a pension or other gratuity or bounty, and it is by no means conceded that it may do so. It might be added in that connection that as far as we have been able to ascertain, there never has been a bill in Congress, passing to enactment, as brazenly retroactive as this one.

STATE TAX CREATED SUBSTANTIAL PROPERTY RIGHT

Even testing the case on the theory of a relationship recognized at common law, the position of the state would appear to be stronger than that of a mere donee. It acted on the leave extended by Congress and into the tax structure went the levy on this preferred stock for the year 1935. Expenses were incurred on the basis of the levy, and it would be an onerous shifting of the burden to require other taxpayers to defray the at least once valid tax bill against this stock. Individuals could not so deal with one another without a contract being implied or an estoppel against the contrary contention arising, and if we must look to the common law to define the status, it would be nothing less than contractual.

Lynch vs. United States, supra.

The Act of Congress of March 20, 1936, in its retrospective feature, not only destroyed the tax for the year 1935 on respondent's preferred capital stock owned by Reconstruction Finance Corporation and also the lien of the tax upon that stock for both the years 1935 and 1936, but it also disarranged the budget of the state, and also the budgets of Maricopa County and Pima County and the affected school districts and other municipal corporations within those counties for the year 1935.

See: *Fullen vs. Calhoun*,
39 Ariz. 40, 3 Pac. (2d) 258.

The Governor of Arizona submits to each regular session of the Legislature of the State of Arizona a budget containing an itemized plan of proposed public expenditures. (Sec. 2611, Revised Code of Arizona

1928*). Counties, incorporated cities and towns annually budget their expenditures. (Sec. 3097, Revised Code of Arizona, 1928**). School districts likewise annually budget their expenditures.

See: *Yanke vs. School District No. 65*, 56 Ariz. 93, 105 Pac. (2d) 966.

These budgets were computed upon the assumption that the yield of taxes upon respondent's shares of preferred capital stock would be forthcoming. Consequently by the amount that the budgets were impaired by the Act of Congress of March 20, 1936, the credit of the state, and of the political subdivisions affected, was proportionately impaired.

In these two suits now under consideration, the taxes had become a lien upon the stock in question. In E-333 (R. 17, 80) the lien had reached the point where the exact amount thereof had been determined and the tax was payable. In the other, the lien had become fixed, though the amount thereof was not yet known. These liens nevertheless were of equal dignity.

United States vs. Alabama, 313 U. S. 274, 85 L. Ed. 1327, 61 Sup. Ct. Rep. 1011.

STATE IS PERSON WITHIN FIFTH AMENDMENT

It was argued below that the word "person" as used in the Fifth Amendment does not include a state. Perhaps historians might deduce that it wasn't intended to include private corporations, although none would make the point now. That amendment, together with all the provisions of the Constitution, was design-

*This section is printed in the Appendix beginning at page 6.
**This section is printed in the Appendix beginning at page 11.

ed to be effective for centuries to come, and just as reasonably contemplated protection of property rights of states as the creation of an organization such as the Reconstruction Finance Corporation. But even on an historical basis, the word should be given a broad meaning. The first ten amendments were designed as a brake upon the authority of the new government—at least so the history books tell us—and it is obvious that to some extent protection for the states was under consideration, as witness the Tenth Amendment. The Circuit Court of Appeals, however, did not deny to the State of Arizona the right to claim the benefit of the Fifth Amendment. Indeed, we think it could not well have done so, in view not only of the considerations mentioned above, but also of the decisions of this court:

Georgia vs. Evans, —— U. S. ——,
86 L. Ed. 927, 62 Sup. Ct. Rep. 972;

Ohio vs. Helvering, 292 U. S. 360,
78 L. Ed. 1307, 54 Sup. Ct. Rep. 725;

City of St. Louis vs. Western Union,
148 U. S. 92, 37 L. Ed. 380, 13 Sup. Ct.
Rep. 485.

STATE WAS PROTECTED BY TENTH AMENDMENT

And what of the Tenth Amendment? The powers that are reserved to the states are the residuum of complete sovereignty after subtracting such powers as were delegated by the states to the United States or prohibited to the states by the Constitution. There is a zone over which the federal government may fittingly extend its legislative program; or it may acquiesce in the assumption by the state of the power of regulation. While such power is being exercised by

the state, it is nothing short of complete. Any other view would deny the doctrine of state sovereignty. True enough, Congress may occupy the field and exclude the states but this raises no implication that the power in the state while validly exercised is limited or less than complete; nor, it will not be pretended that Congress could retroactively destroy that which the state had meanwhile validly created or authorized.

Our case is stronger. The State of Arizona did not assume the power to tax this preferred stock—it was invited to do so. While it was subject to state taxation, the exercise of sovereignty over it in the matter of this taxation was exclusively in Arizona. The United States did not retain any right to supervise or control or rescind the exercise by the State of Arizona of its power of taxation.

It would be entirely inconsistent with the theory of our system of government that the state in the exercise of its conceded power is nevertheless unable to act as a sovereign power. The theory sustained by the Circuit Court of Appeals that Congress could surrender this power to the state, without any limitation, but nevertheless retain by implication the right to destroy the exercise of the power, finds no support in the Constitution.

SUIT BY STATE LIES TO COLLECT TAX

Concededly, property belonging to the United States may not be sold under execution in discharge of valid state taxes if the government is unwilling to be sued. We have no such situation as existed in United States vs. Alabama, supra, where the government acquired property upon which a tax in favor of the state had

attached. The government did not try to destroy that tax—it merely exercised its governmental prerogative of refusing to be sued, a prerogative itself unenthusiastically accepted by this Court, and by some eminent men thought to be a monarchical survival, out of place in this country.

United States vs. Lee,
106 U. S. 196, 27 L. Ed. 171.

It would be a grave question whether Congress may destroy taxes levied on the property of federal agencies by express and valid Congressional consent (a consent which has been widely granted) by later clothing those institutions with governmental immunity from suit. No doubt the present state of decision is that a state may not, in the assertion of any of its interests, sovereign or proprietary, sue the United States without its consent. On principle, this position is not easily defended in view of one of the important purposes of the constitution, viz: to afford a forum for the peaceful settlement of controversies between the two governments; and it is difficult to reconcile it with the holding that the United States may sue one of the states against its will.

United States vs. Texas, 143 U. S. 621,
12 Sup. Ct. Rep. 488, 36 L. Ed. 285.

We know of no decision by this court, however, which goes to the point of holding that immunity from suit may be extended to an agency of the federal government as against claims by a state on obligations validly authorized by Congress. Some overpowering necessity must exist to justify a government in taking the unmoral position that it may destroy valid, legal claims against it by withholding from the claimant the right to institute suit for the recovery thereof. There

is no justifiable reason, we submit, why a doctrine so unconscionable should be extended to federal agencies as to claims held by anyone, let alone states.

United States vs. Lee, supra.

We are dealing with the question of suability, not enforceability. The United States may acquiesce in being sued but may refuse to make the necessary appropriation to pay an adverse judgment. Similarly, a state could no doubt frustrate a judgment against it in a suit which it had authorized. The Reconstruction Finance Corporation is an institution separate from the government and no act of Congress is needed to collect a judgment against it.

The privilege of nonsuability can be waived. The states waived it by becoming members of the Union to the extent set forth in Article III of the Constitution as modified by the Eleventh Amendment. It may be that the United States could not bind itself, even to a state, to waive this immunity but no reason appears why it may not make a binding waiver as to such agencies as are here involved, a national bank, chiefly privately owned, and a federal corporation largely engaged in business competition with private commercial firms.

Here the right to sue national banks and the Reconstruction Finance Corporation has existed during the entire period involved in these cases and still exists.

Title 12, Sec. 24, U.S.C., Revised Statutes, Sec. 5136, as amended, 54 Stat. 261;*

Title 15, Sec. 604, U.S.C. as amended, 54 Stat. 574.**

*This section is printed in the Appendix beginning at page 5.
**This section is printed in the Appendix beginning at page 2.

As applied to this case, the language of the Act under challenge is that the stock "shall not be subject" to the taxation which has already been legally "imposed, levied". Is the doctrine that the United States may not be sued without its consent now to be extended to a rule that Congress may at once command its courts to hear cases in which the United States, or any of its numerous agencies is a party, but nevertheless deny to its opponent the protection of the Constitution?

This Court has said that if the government appears willingly as a party, it stands at the bar of the Court under the law as any other party.

The Siren, 7 Wallace 152, 19 L. Ed. 129;
Curran vs. Arkansas, 15 Howard 304, 14 L. Ed. 705;
Clark vs. Barnard, 108 U. S. 436, 27 L. Ed. 780.

The requirement of the Arizona statute, Section 3070, Revised Code of Arizona, 1928,* that the bank pay the taxes and protect itself through a statutory lien on the shares of the stock has been sustained by this court as an insignificant interference with the operations of the bank.

First National Bank vs. Commonwealth, 9 Wallace 353, at 362, 19 L. Ed. 701.

In Arizona these taxes are collectible in a suit at law against the bank itself, and there is nothing in the Federal Constitution or statutes to inhibit such procedure.

Brophy vs. Powell (Ariz.), 121 Pac. (2d) 647.

*This section is printed in the Appendix beginning at page 8.

On principle, such suit might be maintained against the Reconstruction Finance Corporation, the primary tax obligor.

Nor may the Act of March 20, 1936, be construed as an implied repeal of the federal statutes authorizing the banks and Reconstruction Finance Corporation to be sued. An effort was made to save the statute involved in:

Lynch vs. United States, 292 U. S. 571, 78 L. Ed. 1434, 54 Sup. Ct. Rep. 840,

which disregarded certain contractual rights of veterans of the last war, by urging its acceptance as a withdrawal of the right to sue the federal government. This court took the view, however, that the purpose of the statute was clearly to destroy a property right, and that if the intention had been to withdraw the right to sue the government, it should have been expressed. "The present climate of opinion" said Chief Justice Hughes for this court in the case of

Reconstruction Finance Corporation vs. Menihan Corporation, 312 U. S. 81, 85 L. Ed. 595, 61 Sup. Ct. Rep. 485,

is against immunity from suit for governmental corporate agencies of this kind and it will never be implied in their favor.

The Circuit Court of Appeals was content to rest its decision upon the power of the federal government to exempt shares of national banks from state taxation, and the asserted correlative power to withdraw such shares from state taxation after consent had been given to the state to tax them.

The implications of the Fifth and Tenth Amendments, although invoked by petitioners, were subordinated by the Circuit Court of Appeals to a complacent acceptance of the legislative pronouncement withdrawing the right to tax upon the assertion that the privilege of taxing was a gratuity for which nothing was given or received.

The state and its agencies, we think, are entitled to know whether or not in this era of expanding enterprise by the federal government, Congress may interfere with the functions of the state lawfully exercised by its consent without regard to the harm inflicted, and, if it may, that the pronouncement of Congress alone disentitles the state to invoke the protection of the Fifth or Tenth Amendments or both.

CONCLUSION

Respondent pleads that it stands ready to pay as taxes such further sums over and above the tenders which it made as may be found to be just and equitable, (R. 56, 124; R. 239, 308).

Accordingly it is respectfully submitted that the judgments of the Circuit Court of Appeals, and of the District Court, be reversed with directions to enter

judgments for petitioners for the full amount of the taxes levied and to foreclose the liens thereof..

Respectfully submitted,

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Appendix Follows

APPENDIX

Fifth Amendment to Constitution of the United States:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensaiton."

Tenth Amendment to the Constitution of the United States:

> "The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."

Section 240 (a) of the Judicial Code (28 U.S.C., Sec. 347 (a)):

> (a) In any case, civil or criminal, in a circuit court of appeals, or in the United States Court of Appeals for District of Columbia, it shall be competent for the Supreme Court of the United States, upon the petition of any party thereto, whether Government or other litigant, to require by certiorari, either before or after a judgment or decree by such lower court, that the cause be certified to the Supreme Court for determination by it with the same power and authority, and with like effect, as if the cause had been brought there by unrestricted appeal."

Section 24 of the Judicial Code, as amended (Title 28, Sec. 41, U.S.C.)

"The District Courts shall have original jurisdiction as follows:

"First. Of all suits of a civil nature, at common law or in equity, * * * where the matter in controversy exceeds, inclusive of interest and costs, the sum or value of $3,000, and (a) arises under the Constitution or laws of the United States * * * "

Section 128 (a) of the Judicial Code, as amended (Title 28, U.S.C. Sec. 225):

"The Circuit Courts of Appeal shall have appelate jurisdiction to review by appeal final decisions—First. In the District Courts, in all cases save where a direct review of the decision may be had in the Supreme Court under section 345 of this title."

Title 15, U.S.C., Sec. 604; amended June 25, 1940, c. 427, Sec. 6 (b), 54 Stat. 574:

"604. *Period of succession; powers; use of mails and other facilities of Government.*

"The corporation shall have succession for a period of fifteen years from the date of the enactment hereof, unless it is sooner dissolved by an Act of Congress. It shall have power to adopt, alter, and use a corporate seal, which shall be judicially noticed; to make contracts; to lease such real estate as may be necessary for the transaction of its business; to sue and be sued, to complain and to defend, in any court of competent jurisdiction, State or Federal; to select, employ, and fix the compensation of such officers, employees, attorneys, and agents as shall be necessary for the transaction of the business of the corporation, without regard to the provisions of oth-

er laws applicable to the employment and compensation of officers or employees of the United States; to define their authority and duties, require bonds of them and fix the penalties thereof, and to dismiss at pleasure such officers, employees, attorneys, and agents; and to prescribe, amend, and repeal, by its board of directors, by-laws, rules, and regulations governing the manner in which its general business may be conducted and the powers granted to it by law may be exercised and enjoyed, including the selection of its chairman and vice chairman, together with provision for such committees and the functions thereof as the board of directors may deem necessary for facilitating its business under Sections 601-604, 605, 606-606b, 606g, 607, 608, 609, 610, 611, 612, 613, 614-616, and 617 of this title. The board of directors of the corporation shall determine and prescribe the manner in which its obligations shall be incurred and its expenses allowed and paid. The corporation shall be entitled to the free use of the United States mails in the same manner as the executive departments of the Government. The corporation, with the consent of any board, commission, independent establishment, or executive department of the Government, including any field service thereof, may avail itself of the use of information, services, facilities, officers, and employees thereof in carrying out the provisions of the sections hereinbefore enumerated."

R. S. Sec. 5219, 42 Stat. 1499, 44 Stat. 223; Title 12, Sec. 548, U.S.C.:

"The legislature of each State may determine and direct, subject to the provisions of this section, the manner and place of taxing all the shares of national banking associations located within its limits. The several States may (1) tax said shares, or (2) include dividends derived therefrom in the taxable income of an owner or holder

thereof, or (3) tax such associations on their net income, or (4) according to or measured by their net income, provided the following conditions are complied with:

"1. (a) The imposition by any State of any one of the above four forms of taxation shall be in lieu of the others, except as hereinafter provided in subdivision (c) of this clause.

"(b) In the case of a tax on said shares the tax imposed shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State coming into competition with the business of national banks: *Provided*, That bonds, notes, or other evidences of indebtedness in the hands of individual citizens not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with such business, shall not be deemed moneyed capital within the meaning of this section.

"(c) In case of a tax on or according to or measured by the net income of an association, the taxing State may, except in case of a tax on net income, include the entire net income received from all sources but the rate shall not be higher than the rate assessed upon other financial corporations nor higher than the highest of the rates assessed by the taxing State upon mercantile, manufacturing, and business corporations doing business within its limits: *Provided, however*, That a State which imposes a tax on or according to or measured by the net income of, or a franchise or excise tax on, financial, mercantile, manufacturing, and business corporations organized under its own laws or laws of other States and also imposes a tax upon the income of individuals, may include in such individual income dividends from national banking associations located within the State on condition that it also includes dividends from domestic corporations

and may likewise include dividends from national banking associations located without the State on condition that it also includes dividends from foreign corporations, but at no higher rate than is imposed on dividends from such other corporations.

"(d) In case the dividends derived from the said shares are taxed, the tax shall not be at a greater rate than is assessed upon the net income from other moneyed capital.

"2. The shares of any national banking association owned by nonresidents of any State, shall be taxed by the taxing district or by the State where the association is located and not elsewhere; and such association shall make return of such shares and pay the tax thereon as agent of such nonresident shareholders.

"3. Nothing herein shall be construed to exempt the real property of associations from taxation in any State or in any subdivision thereof, to the same extent, according to its value, as other real property is taxed.

"4. The provisions of section 5219 of the Revised Statutes of the United States as in force prior to March 25, 1926, shall not prevent the legalizing, ratifying, or confirming by the States of any tax heretofore paid, levied, or assessed upon the shares of national banks, or the collecting thereof, to the extent that such tax would be valid under said section."

R. S. Sec. 5136, as amended 54 Stat. 261; Title 12, Sec. 24, U.S.C.:

"24. *Corporate powers of associations.*

"Upon duly making and filing articles of association and an organization certificate a national banking association shall become, as from the date of the execution of its organization certificate, a

body corporate, and as such, and in the name designated in the organization certificate, it shall have power—

"First. To adopt and use a corporate seal.

"Second. To have succession from February 25, 1927, or from the date of its organization if organized after February 25, 1927, until such time as it be dissolved by the act of its shareholders owning two-thirds of its stock, or until its franchise becomes forfeited by reason of violation of law, or until terminated by either a general or a special Act of Congress or until its affairs be placed in the hands of a receiver and finally wound up by him.

"Third. To make contracts.

"Fourth. To sue and be sued, complain and defend, in any court of law and equity, as fully as natural persons.

Section 2611, Revised Code of Arizona, 1928 (appearing in the Arizona 1939 Annotated Code as 10-105):

"10-105. *Survey by governor—Budget, submission to legislature.*—On or before the first day of January of each year preceding regular legislative sessions, the governor and his secretaries shall have completed a careful survey of all the public offices and agencies of the state, upon which to base his recommendations to the legislature. Within five (5) days after the beginning of the regular session of the legislature, the governor shall present to the presiding officer of each branch of the legislature printed copies of a budget, based upon his own conclusions and judgment, containing a complete and itemized plan of all proposed expenditures for each public office, or agency, or undertaking, classified by subject, character and purpose; and a like statement of estimated revenues, balances or deficits

of funds, for each year of the biennial period beginning with the first day of July thereof, and include therein an estimate of amounts which may be required to meet any emergency due to casual deficits in funds, failure of revenues, or other contingency, with suggestions as to any immediate appropriation therefor. The budget so prepared shall show the actual financial condition of each fund, appropriation and activity of the agencies of the state as shown by the annual reports made and filed covering at least two (2) completed fiscal years prior thereto; the items as estimated by reporting agencies as being necessary for the ensuing biennial period after July first following said budget; the actual appropriations for purposes of the two (2) preceding fiscal years, and for the current fiscal year; all so placed in separate parallel columns that the appropriations for each year, and the actual expenditures as estimated by the governor, may appear and show by comparison thereof, the increase and decrease, in items, purposes and objects, and to be so summarized and totaled that aggregates of all deficits, and aggregates of all estimates of other state officers, and offices, with the aggregate of expenditures and appropriations as proposed by the governor, may appear therein in positions for comparison. Such budget shall contain an itemized and complete financial balance statement for the state at the close of the last fiscal year preceding the budget, and include a statement of the debts, current assets, liabilities, reserves and trust funds accurately disclosing the financial condition of the state, and every department and state agency."

Section 3069, Revised Code of Arizona, 1928 (appearing in the Arizona 1939 Annotated Code as 73-204):

"73-204. *Assessment of property and shares of stock in corporations—Banking, building and loan associations or corporations, and finance*

corporations.—The property of corporations shall be assessed and taxed and no assessment shall be made of the shares of stock of corporations, nor shall any holder thereof be taxed for such shares. The foregoing provision shall not apply to a banking corporation; building and loan associations or corporations, and a corporation or association engaged in the business of using money wherewith to make money for the owners of its shares, the shares of stock of which shall be assessed and taxed as other property, in the name of the shareholders of the several shares thereof, to be entered and taxed in the name of, and be payable by, such corporation or association."

Section 3070, Revised Code of Arizona, 1928 (appearing in the Arizona 1939 Annotated Code as 73-205):

"73-205. *Statement to assessor by banking corporation and shareholders — Tax payable by corporation.*—Upon the demand of the assessor, the officers in charge of any such banking corporation or such corporation or association engaged in the business of using money wherewith to make money, shall make out and deliver to said assessor a sworn statement showing the number of shares, the name and residence of each shareholder, and the number of shares owned by him; the surplus, reserve fund, and undivided profits; and the par and marked value of the shares. The full cash value of such shares shall be ascertained according to the best information which the assessor may be able to obtain, whether from any return made to any officer of the state or the United States, from actual sales of the stock, or from other trustworthy sources. Every such shareholder shall, where such corporation or association is located, render at their full cash value to the assessor all shares owned by him therein, and if the shareholder fail to do so, the assessor shall list and assess such unrendered shares as other un-

rendered property. The taxes due thereon shall be paid by such corporation or association, and shall be a lien against and assessed to such shares of stock, and no such corporation or association shall pay any dividends to any shareholder who is in default in the payment of taxes due on his shares, nor shall it permit the transfer on its books of any shares the owner of which is in default in the payment of his taxes on the same.

Section 3071, Revised Code of Arizona, 1928 (appearing in the Arizona 1939 Annotated Code as 73-206):

"73-206. *Situs of stock — Where tax payable.* —Every such corporation or association, for the purpose of said assessment, shall be considered as located in every county, city or town wherein it has an office for the purpose of carrying on its business, and the shares shall be subject to taxation in any county, city or town wherein it has such office. The officer of such corporation or association shall state in his statement if his association or corporation is subject to taxation in more than one (1) county, city or town, and the proportion of its assets situated in each thereof. The shares of such corporation or association shall be taxed in each county, city or town for only such portion of their value as the assets situated in that county, city or town bear to the assets of the entire corporation or association. When a bank maintains branches or conducts business in more than one (1) county, city or town, the assessed value of the capital stock shall be apportioned among the several counties, cities and towns in which the main office or such branches are maintained or business conducted, and the amount apportioned to each county, city or town shall not be less than the actual cash value of the real and personal property of such bank situated in such county, city or town."

Section 3074, Revised Code of Arizona, 1928, (appearing in the Arizona Code Annotated, 1939, as Section 73-402):

"73-402. *Assessments.— When and how made.* —Between the first Monday in January and the first day in May in each year, the county assessor, except as otherwise required by the state tax commission, shall ascertain, by diligent inquiry and examination, all property in his county subject to taxation, the names of all persons owning, claiming, or having the possession or control thereof, determine the full cash value of all such property, and then list and assess the same to the person owning, claiming, or having the possession, charge, or control, thereof. The property of a ward shall be listed by his guardian; of a minor, having no guardian, by his father, if living, if not, then by his mother, if living, then if not, by the person having the property in charge; of a beneficiary for whom property is held in trust, by the trustee; of a deceased person by the executor or administrator; of a person whose assets are in the hands of receiver by such receiver; of a corporation, association, society, or partnership, by its principal accounting officer, agent, or partner. Property under mortgage, contract, or lease shall be listed by and taxed to the mortgagor or lessor, unless it be listed by and taxed to the mortgagee or lessee. Personal property in the hands of a trustee, agent, administrator, executor, or receiver, and personal property mortgaged or pledged shall, for the purpose of taxation, be deemed the property of the person who has the possession thereof, and shall be listed by such person. The assessor may demand from each person and firm, and from the president, cashier, treasurer, or managing agent of each corporation or association within his county, a correct list under oath or affirmation, of all the property within the county, owned or claimed by, or in the possession or control of, such person,

firm, corporation, or association; may call for information therefrom bearing upon the valuation or listing of taxable property; may examine any maps, drawings, books, invoices, and papers; summon witnesses to appear and testify and compel them to produce such books and papers; and, upon the failure, neglect, or refusal, of any person to obey, such person shall be guilty of a misdemeanor. If any person shall neglect or refuse on demand, or fail without demand of the assessor or his deputy, to give, under oath or affirmation, the list required, or if the owner of any property not listed by another person, shall be absent or unknown, the assessor shall fill out a list for such person, putting therein all taxable property which he has reason to believe is owned by, or in the possession or control of said person, liable to taxation. If the name of an absent owner is known to the assessor, the property shall be assessed in his name, if unknown to the assessor, it shall be assessed to 'unknown owners.' If the assessor believes that any person has not returned a full and complete list of all the property under his control, he may make such investigation as he may deem necessary to ascertain the full amount and extent of such property. The cost of such investigation shall be a charge against the county; provided, that if the assessor finds more property than is returned in said list, said cost shall be assessed as a penalty against the property so found and collected at the time the tax is collected. Any property discovered to have escaped assessment shall be assessed at its full cash value for the current year and each year it escaped assessment."

Section 3097, Revised Code of Arizona, 1928 (appearing in the Arizona 1939 Annotated Code as 73-502):

"73-502. *County and city officer to make annual statement and estimate — Publication and*

notice.—The Board of supervisors of each county, and the governing body of each incorporated city or town, not less than thirty (30) days prior to the date on which the regular annual tax levy is made, shall prepare a full and complete statement of the financial affairs of the fiscal year last past; and an estimate of the different amounts which may be required to meet the public expense for the ensuing year, fixing the amounts proposed for all subjects of recurring items of expense and an amount for contingency or emergency not anticipated. The estimate shall contain a statement of the amount of money required for each item of expenditure necessary for county, city or town purposes, the amounts necessary to pay the interest and principal of any bonds, and the items and amounts of every special levy provided by law. The estimate shall be entered upon the minutes of the governing body and shall be fully itemized, showing under separate heads the amounts proposed as required for each department, public office or official, for each public improvement, for the maintenance of each public structure, institution and school, and the salary of each public officer; the amounts proposed for the maintenance of public highways, roads, streets, and bridges, and the construction, operation and maintenance of each public utility, and a full and complete disclosure and statement of the contemplated expenditures for the ensuing year, showing the amount proposed to be expended from each separate fund, and the total amount of proposed public expense. Said statement shall also contain a statement of the receipts for the previous year from sources other than direct property taxation, the amounts actually levied and amounts actually collected for county, city, or town purposes upon the tax rolls of the previous fiscal year, and the amount proposed to be raised by taxation upon the real and personal property of such county, city or town, for each purpose for the said ensuing year. The

total amounts in such estimates proposed for expenditure shall not exceed by ten (10) per centum the aggregate of actual expenditures for the previous year exclusive of expenditures for school, bond, special assessment and district levy purposes. The form of such statements shall be furnished by the state tax commission, to comply with the requirements hereof. The estimates together with a notice that such board of supervisors, or governing body, will meet for the purpose of making tax levies, as set forth in said estimates, naming the time and place of holding such meeting, shall be published for at least two (2) consecutive weeks following the tentative adoption of such estimates, in the official newspaper of such county, city or town, if there be one, if not then in a newspaper of general circulation therein.".

Section 3101, Revised Code of Arizona, 1928, as amended by Chapter 106, Session Laws of Arizona for 1931 (appearing in the Arizona 1939 Annotated Code as 73-506):

"73-506. *Lien for taxes — Liability of Property — Homestead exempt.* — Every tax levied under the authority of this chapter upon real or personal property shall be a lien upon the property assessed. The lien shall attach on the first Monday in January in each year, and shall not be satisfied or removed until such taxes, penalties, charges and interest are all paid, or the property has finally vested in a purchaser under a sale for taxes. The lien shall be prior and superior to all other liens and encumbrances upon the property, except liens or encumbrances held by the State of Arizona. Personal property shall be liable for taxes levied on real property, and real property shall be liable for taxes levied on personal property, and a judgment against real property for non-payment of taxes thereon or assessed to the personal property of the same person, shall

not be prevented by showing that the owner thereof was possessed of personal property out of which the taxes could have been made; but real property occupied as a homestead shall not be charged for taxes other than the taxes due on such homestead."